

## **CHAPTER 2.66**

### **Police and Fire Pension Plan "C"**

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#### **2.66.010 Establishment of Police and Fire Pension Plan.**

The City hereby establishes a retirement plan for all commissioned police and firefighters to be known as the Police and Fire Pension Plan "C". City normal cost contributions inclusive of administrative expenses determined as a result of an actuarial evaluation shall be placed in the "Police and Fire Pension Fund" by no later than fiscal year end August 31, 2009. The plan is intended to meet the requirements of Internal Revenue Code Sections 401(a) and 414(k). (Ord. 18732 §3; June 5, 2006: prior Ord. 17860 §1; June 11, 2001: Ord. 16643 §1; July 25, 1994: Ord. 15728 §1; September 24, 1990).

## **2.66.020 Definitions.**

As used in this chapter, and unless the context otherwise requires, the following words shall have the following meanings:

**Actuarial equivalent.** The computation of the actuarial equivalent shall be according to the group annuity mortality table 1971, and interest of six percent per annum, compounded annually.

**Age and service retirement benefits** shall include pension benefits payable to members who meet applicable age and service requirements and who elect to retire, and shall not include disability retirement benefits.

**Base pay** shall include a member's base rate of pay, longevity, and shift differential and shall exclude any other additional form of pay or benefit.

**City** shall mean the City of Lincoln, Nebraska.

**Deferred annuity** shall mean an annuity under the terms of which a member has a fully vested right to receive payment at a definite future date. Deferred annuities shall be payable to members who have at least ten years of service, but have not attained age fifty-three. The amount payable shall be an actuarial equivalent based upon: a ratio of the number of years of the member's service over the number twenty-one applied to the otherwise applicable age and service retirement benefits; the age of the member at time of termination; and the options relating to distribution and survivor beneficiaries selected by the member.

**Disability retirement benefit** shall mean a benefit payable as a result of permanent and total disability while in the commissioned service of the City. The amount of the benefit shall be determined by several factors, including but not limited to, the member's regular pay, years of service, and the cause of the permanent and total disability.

**DROP** shall mean the Deferred Retirement Option Plan as provided in Section 2.66.045. The Deferred Retirement Option Plan shall be treated as a defined contribution plan for Police and Fire Plan C members. The DROP is intended to meet the requirements of Internal Revenue Code Section 414(i).

**DROP contributions** shall mean optional contributions paid to the member's DROP account by the member while enrolled in the DROP program. The contribution percent shall be set forth in the applicable mayoral executive order for Plan C members.

**DROP period** shall mean the amount of time the member elects to participate in the DROP which shall be for a period not to exceed five years from and after the date of the member's DROP election.

**Eligible pension benefit payment** shall mean regular age and service retirement benefits determined in accordance with Sections 2.66.040 and 2.66.090(c) of the plan but frozen as of the date the DROP is elected by the member.

**Former member** shall mean a member who has terminated his or her service with the commissioned fire or police service of the City.

**Member** shall mean any individual in the commissioned fire or police service of the City employed prior to April 11, 1984 who, prior to April 11, 1984, did not elect to make required contributions of 7.6% of base pay to the plan and who elected to participate in Police and Fire Pension Plan C within thirty days after the operative date of Chapter 2.62 of the Lincoln Municipal Code; provided, however, the Police Chief and the Fire Chief shall not be eligible to participate in this plan.

**Military service** shall include service in the U.S. Army, Navy, Air Force, Marine Corps and any branch of service connected therewith.

**Normal retirement age** shall be attained age fifty-three.

**Partial annuity benefit** shall mean a benefit payable to a member who terminates employment after completing ten years of service, but before satisfying all of the requirements for age and service retirement. The amount payable shall be an actuarial equivalent based upon: a ratio of the number of years of the member's service (not to exceed twenty-one) over the number twenty-one applied to the otherwise applicable age and service retirement benefits; the age of the member at time of termination; and the options relating to distribution and survivor beneficiaries selected by the member.

**Plan** shall mean the Police and Fire Pension Plan "C" of the City.

**Regular interest** shall mean the rate of interest earned each calendar month, commencing January 1, 1976, as determined by the City in conformity with the actual earnings on investment of the fund created by Section 2.66.010. Whenever such interest is required to be credited to any member under the provisions of this title, such interest during any calendar month or portion of such month shall be based upon his or her accumulated contributions, plus regular interest thereon, on the first day of that month.

**Regular pay** shall mean the member's base pay and the City's contributions to the Post Employment Health Plan (PEHP) for the last consecutive twenty-six bi-weekly pay periods. In case of a demotion, or out-of-class pay, it shall mean the highest consecutive twenty-six bi-weekly pay periods.

**Required contributions** shall mean contributions of seven percent of a member's base pay.

**Retirement** shall mean the termination of service in the commissioned fire or police service of the City upon or after fulfilling all conditions of eligibility for retirement, and shall include regular, extended, early, and disability retirement.

**Survivor beneficiary** shall mean the natural person having an insurable interest designated in writing by the member to receive benefits under this plan in the event of and after the death of a member.

**Total disability** shall mean (a) the physical incapacity of a member to perform the work of a firefighter or police officer resulting from violence to the physical structure of the body and such physical disease or infection as naturally results therefrom, or (b) mental disorder (excluding mental deficiency and personality disorder) of a member, diagnosed in accordance with the American Psychiatric Association Manual, 1980 Edition, which is sufficiently severe so as to warrant a minimum rating of fifty percent under the general rating formula set forth in 38 C.F.R. § 4.132 (7-1-93 Edition) [See Appendix A].

**Year of service** shall mean a period of twelve full calendar months during which a member is employed in a pay status in the commissioned service of the City. Partial years credit for service shall be computed on a prorata basis. (Ord. 17916 §1; September 24, 2001: prior Ord. 17860 §1; June 11, 2001: Ord. 17680 §1; May 30, 2000: Ord. 17427 §3; November 2, 1998: Ord. 16750 §1; March 20, 1995: Ord. 16643 §2; July 25, 1994: Ord. 15728 §2; September 24, 1990).

## **2.66.030 Conditions of Eligibility.**

When any member shall have fulfilled all conditions of eligibility for retirement, and regardless of whether the member elects to retire, the benefits provided in Section 2.66.040 shall be payable upon termination of the member's service, whether the termination results from the member's death, resignation, discharge, or any other cause. (Ord. 15728 §3; September 24, 1990).

#### **2.66.040 Age and Service Retirement Benefits.**

(a) Regular age and service retirement benefits. A member who (i) has attained normal retirement age, (ii) completed twenty-one years of service, and (iii) elects to retire from active service shall be entitled to receive regular age and service retirement benefits upon retirement from active duty. Such benefit shall be equal to fifty-four percent of regular pay.

(b) Extended age and extended service retirement benefits. A member who (i) has previously become eligible for a regular age and service retirement benefit, (ii) has worked for a period of between 0-60 months after becoming eligible, and (iii) elects to retire from active service shall be entitled to receive an extended age and extended service benefit upon retirement from active duty. Such benefit shall be equal to a regular age and service retirement benefit with the percentage increased by two percent per year for each of a member's years of service after becoming eligible for a regular age and service retirement benefit for a maximum of sixty months or ten percent.

(c) Partial annuity benefits. A member who (i) has attained normal retirement age, (ii) completed at least ten years of service, and (iii) elects to retire from active service shall be entitled to receive a partial annuity benefit. Such benefit shall be equal to a regular age and service retirement benefit reduced by multiplying the member's regular age and service retirement benefit by a fraction, the denominator of which is twenty-one and the numerator of which is the number of years of service completed by the member at the date of his or her normal retirement (not to exceed twenty-one).

(d) Early retirement benefit. A member who (i) has attained age fifty, (ii) completed at least twenty-one years of service, and (iii) elects to retire from active service shall be entitled to receive an early retirement benefit. Such benefit shall be based on the following:

The early retirement benefit shall be equal to:

at age 50 and 21 years of service = 48%

at age 51 and 21 years of service = 50%

at age 52 and 21 years of service = 52%

The pension of a member whose age, on the date of retirement, exceeds an otherwise applicable age and service level as set forth above will be increased by an amount equalling two percent of regular pay times a fraction, the denominator of which is 365 and the numerator of which is the number of days by which the member's age exceeds the otherwise applicable age and service level.

(e) Benefit payments shall commence no later than April 1 of the calendar year following the later of (i) the calendar year in which the member attains age 70 1/2 or (ii) the calendar year in which the member's employment with the City terminates. (Ord. 17860 §3; June 11, 2001: prior Ord. 16643 §3; July 25, 1994: Ord. 15728 §4; September 24, 1990).

#### **2.66.045 Operation of the Deferred Retirement Option Plan (DROP).**

(a) Any member who meets the participation requirements of Section 2.66.045(b) shall have the opportunity to participate in the DROP program. The DROP program provides that for a one-year period, subsequent to attaining normal age and service retirement eligibility, or subsequent to the adoption of the DROP program which for purposes of this section shall be deemed to be the later of September 1, 2000 or the first of the month following a favorable letter determination by the Internal Revenue Service, a member may voluntarily choose to participate in the DROP program. If the member chooses to participate in the DROP program, the member shall be deemed to have retired for purposes of the Police and Fire Pension Plan "C", but the member may continue in active employment for a five-year period. During the DROP period, the member's eligible pension benefit

payments and/or DROP contributions will be deposited into a DROP account for the benefit of the member until the member actually retires from active employment at or before the expiration of the DROP period. Thereafter, future pension payments will be made directly to the member, and the member will then have access to all funds in the account(s) designated for the benefit of the member.

(b) To participate in the DROP program, a member must meet the following requirements:

(1) A member shall be eligible to enter the DROP program at any time during the one-year period subsequent to the date when the member has (i) attained normal retirement age; and (ii) completed twenty-one years of service. Members having attained normal retirement age and completed twenty-one years of service on or before the date of adoption of the DROP program shall be eligible to enter the DROP program only during the one-year period subsequent to the date of adoption of the DROP program which shall be deemed to be the later of September 1, 2000 or the first of the month following a favorable letter of determination by the Internal Revenue Service.

(2) A member who elects to enter the DROP program shall be entitled to receive regular age and service retirement benefits in accordance with Sections 2.66.050 and 2.66.090(c). A member is entitled to remain in the DROP program for a maximum of five years subsequent to the date of the member's DROP election. A member may separate from service and thereby exit the DROP program at any time during the five-year DROP period. On or before the completion of the five-year DROP period, the member must separate from active employment and thereby exit the DROP program.

During the DROP period, a member's eligible pension benefit payment shall be payable to the DROP investment account vendor designated in the member's name. Accordingly, amounts transferred or paid to a participating member's DROP account shall not constitute annual additions under Internal Revenue Code Section 415.

(3) A member electing to enter the DROP program must choose a pension payment option as outlined in Section 2.66.040. After the option is chosen, the member shall not be entitled to any retirement benefit changes for reasons including, but not limited to, wage increases, promotions, and/or demotions; provided, however, that the restriction on retirement benefit changes shall not apply in the event of duty-related death or duty-related disability. The benefit amount shall be frozen as of the date of election and shall be payable as if the employee retired on that date and separated from active employment. In the event a member incurs a duty-related death or duty-related disability during the DROP period, the member or the member's designated pension survivor beneficiary will have the option to forfeit the DROP account designated for the member and accept a duty-related death pension or duty-related disability pension or keep the DROP account and normal age and service pension. A member shall also have the option of designating a specific beneficiary of the DROP account maintained for the benefit of the member.

(4) No member shall be allowed to continue making the required contributions while the member is enrolled in the DROP program. Any member that is enrolled in the DROP program may elect to make DROP contributions during the DROP period. Such contributions shall constitute annual additions under Internal Revenue Code Section 415(c).

(5) The member shall be paid the balance of the DROP account upon the member's separation from active employment or at the expiration of the DROP period thereby ending the member's participation in the DROP program. In the event a member has not voluntarily separated from active employment on or before the completion of the five-year DROP period, the member's pension benefit payments will be made directly to the member thereby ending the member's active employment. The member's DROP account will consist of accrued eligible pension

benefit payments, interest on such payments, any DROP contributions, and interest on any DROP contributions.

(6) Any member that is enrolled in the DROP program shall be responsible for directing the DROP account designated for the benefit of the member by investing the account in any of the DROP program investment options. There shall be no guaranteed rate of investment return on DROP account assets. Any losses, charges or expenses incurred by the participating DROP member in such member's DROP account by virtue of the investment options selected by the participating DROP member, shall not be made up by the City or the Plan but all of same shall be born by the participating DROP member. Transfers between investment options shall be in accordance with the rules and regulations of the DROP. A DROP account shall be established for each participating DROP member. Such DROP account shall be adjusted no less frequently than annually for DROP contributions, the member's eligible pension benefit payment distributions, and net investment earnings and losses.

(7) If the DROP account is subject to administrative or other fees or charges, such fees or charges shall be charged to the participating DROP member's DROP account. (Ord. 17860 §4; June 11, 2001; prior Ord. 17680 §2; May 30, 2000).

#### **2.66.050 Pension Payment Options; Survivorship Options; Beneficiary Designation.**

(a) On or prior to the effective date of a member's retirement, but not thereafter, any member may elect, by written notice filed with the City, to receive:

(1) An annuity commensurate with the applicable age and service retirement benefit; or

(2) A lump sum distribution of such member's contributions plus regular interest to the date of disbursement of funds and a reduced annuity, equal to the annuity which would otherwise have commenced upon retirement reduced by the portion of such benefits that are actuarially equivalent to the amount of the contributions and interest withdrawn.

(b) On or prior to the effective date of a member's retirement, but not thereafter, any member may elect, by written notice filed with the City, to receive the annuity provided for in (a) above as a straight life annuity, or to receive the actuarial equivalent of a straight life annuity throughout his or her life, reduced actuarially to reflect the selection of Option 1 or Option 2 below, and designate a survivor beneficiary, having an insurable interest, to receive either of the following two survivorship options:

(1) Option 1. Upon the member's death, an amount equal to the member's annuity shall be payable to the survivor beneficiary for the remainder of his or her life.

(2) Option 2. Upon the member's death, an amount equal to one-half of the member's annuity shall be payable to the survivor beneficiary for the remainder of his or her life.

(c) Any election or designation made by a member under this section may be revoked or changed by the member without the consent of any other person, or a new election or designation may be substituted by the member as long as he or she may desire, but not later than the date of retirement.

(d) Distributions will comply with applicable requirements of Section 401(a)(9) of the Internal Revenue Code. (Ord. 15728 §5; September 24, 1990).

#### **2.66.055 Limitations of Benefits.**

The benefits payable to a member from this Plan by City contributions shall be subject to the limitations of Internal Revenue Code Section 415 in accordance with subsections (a) and (b) below:

(a) Any annual pension payable to a member of the defined benefit plan shall not exceed the amount specified under Internal Revenue Code Section 415(b), specifically the lesser of:

(1) One hundred forty thousand dollars (\$140,000) adjusted for increases in the cost of living as prescribed by the Secretary of the Treasury or his delegate effective January 1 of each calendar year. The dollar limitation described in this subsection will not be reduced if a member retires before Social Security retirement age in accordance with the provisions of Internal Revenue Code Section 415(b)(2)(G) which exempts police and fire personnel from the reduction in the dollar limitation described in this subsection; or

(2) One hundred percent (100%) of the employee's average earnings for the three consecutive calendar years while a member in the Plan in which his earnings were the highest. Effective for years after December 31, 1994, the salary limitations described by this subsection do not apply to governmental plans as defined by Internal Revenue Code Section 414(d).

(b) Any optional DROP contributions made to the DROP account shall constitute annual additions as defined by Treas. Reg. Section 1.415-6(b)(1) and shall be subject to the limitations of Internal Revenue Code Section 415(c) and shall not exceed the lesser of:

(1) Thirty thousand dollars (\$30,000) adjusted for increases in the cost of living as prescribed by the Secretary of the Treasury or his delegate, or

(2) Twenty-five percent (25%) of the member's compensation for the limitation year.

The term annual additions as defined by Treas. Reg. Section 1.415-6(b)(1) and for purposes of this section, shall mean the sum credited to a participant's account for any limitation year of employee contributions, employer contributions, and forfeitures.

(c) DROP account assets attributable to eligible pension benefit payments deposited in the DROP account shall constitute a transfer from one qualified plan to another and will not be considered annual additions as described in subsection (b) of this section. Such transfers are excluded from the definition of annual additions as provided by Treas. Reg. Section 1.415-6(b)(2). Such transfers shall be subject to the limitations imposed by Internal Revenue Code Section 415(b) before the transfer occurs. (Ord. 17860 §5; June 11, 2001).

#### **2.66.060 Termination with Ten Years or More of Service Prior to Retirement Age; Deferred Annuity.**

(a) A member who terminates service, either voluntarily or involuntarily, for reasons other than death or disability (i) after the completion of ten years of service, and (ii) prior to the attainment of normal retirement age under the plan, shall be eligible for and may select to receive one of the following:

(1) The member's accumulated required contributions plus regular interest accrued thereon to the date of distribution of funds, payable in lump sum; and a deferred annuity, if any, payable at normal retirement age, the value of which shall be reduced by the value of the member's required contributions and regular interest distributed in lump sum; or

(2) A deferred annuity payable at:

- A. The later of age fifty or date of termination from active service, or
- B. Normal retirement age.

Such deferred annuity shall be computed on an actuarially equivalent basis utilizing the member's actual date of termination.

(b) A member shall be entitled to elect, by written notice filed with the City, to receive a reduced annuity and designate a survivor beneficiary in accordance with the options as set forth in Section 2.66.050(b).

(c) Any member who resigns or is terminated shall notify the City of his or her selection of pension options within thirty days from the date of separation. Failure to notify the City of his or her selection shall result in the employee forfeiting the option for a lump sum distribution, and in the member being deemed to have selected the straight life option. (Ord. 15728 §6; September 24, 1990).

#### **2.66.070 Termination with Less Than Ten Years of Service; Re-employment.**

A member who (i) has completed less than ten years of service, and (ii) terminates from service, either voluntarily or involuntarily for reasons other than death or disability shall be entitled to receive his or her accumulated required contributions, plus regular interest thereon to the date of distribution of funds in a lump sum. (Ord. 16643 §4; July 25, 1994; prior Ord. 15728 §7; September 24, 1990).

#### **2.66.080 Disability Retirement Benefits.**

(a) Permanent and Total Disability Resulting from Accident or Other Cause Occurring in the Line of Duty.

(1) A member who, prior to the attainment of normal retirement age, incurs permanent and total disability resulting from accident or cause, for the work required by his or her classification, and occurring in the line of duty shall be entitled to receive a monthly disability retirement benefit, based on required contributions, equal to fifty-four percent of regular pay.

(2) A member who incurs permanent and total disability resulting from accident or other cause occurring in the line of duty after attaining normal retirement age shall be entitled to receive a monthly disability retirement benefit equal to fifty-four percent of regular pay; and this monthly disability retirement benefit shall be increased by two percent of regular pay for each of the first five years of service completed by the member after the attainment of normal retirement age. In no event shall the total increase in disability retirement benefit exceed ten percent of regular pay.

(b) Temporary Total Disability Resulting from Accident or Other Cause in the Line of Duty. A member who incurs temporary total disability resulting from accident or other cause, for the work required by his or her classification, and occurring in the line of duty shall be entitled to receive his or her salary and earned fringe benefits during the continuance of the temporary total disability for a period not to exceed twelve months from date of occurrence. If the temporary total disability becomes permanent during the twelve-month period from date of occurrence, or is determined to be permanent by the City Council or other proper municipal authorities, then these benefits cease and the member shall be entitled to receive the disability retirement benefit described in subsection (a)(1) or (a)(2), whichever is applicable.

(c) Permanent and Total Disability Resulting from Accident or Other Cause Not Occurring in the Line of Duty. A member who incurs permanent and total disability resulting from accident or other cause, for the work required by his or her classification, and not occurring in the line of duty is entitled to receive a disability retirement benefit and shall immediately be placed upon the pensioned roll. The amount of this disability retirement benefit is based upon the number of



years of service the member has completed at the time the permanent and total disability commences, and is computed as follows:

- (i) A member who has completed at least five years of service but less than ten years of service shall receive a benefit equal to 21%.
- (ii) A member who has completed at least ten years of service but less than fifteen years of service shall receive a benefit equal to 36%.
- (iii) A member who has completed fifteen or more years of service shall receive a benefit equal to 49%.

(Ord. 16643 § 5; July 25, 1994; prior Ord. 15728 §8; September 24, 1990).

#### **2.66.085 Review of Disability Retirement Benefits.**

(a) For a period of three years from the date of a former member's retirement for a disability, the Plan Administrator shall be authorized, not more often than annually, to require the former member to submit to an examination by a physician of the Plan Administrator's choice to determine whether the former member is still permanently and totally disabled. The Plan Administrator may also request such an examination upon receipt of a written request of the former member to return to duty.

(b) The payment of disability retirement benefits shall cease if it is determined by the Mayor, upon the recommendation of the Disability Pension Review Committee, that the former member is no longer permanently and totally disabled by the injury or condition for which such former member was retired and the former member (i) has been restored to active duty in the same rank held as of the date of retirement; or (ii) has been ordered restored to active duty in such same rank and shall have declined, refused or neglected to report for duty; or (iii) has been ordered restored to active duty in such same rank and shall have been unable to meet minimum departmental performance standards. In the event of (ii) and (iii), such employee shall thereafter be entitled only to the benefit earned by age and service.

(c) The pension contributions and interest of such former member restored to active duty shall be restored to the same values in existence as of the date of retirement. Pension contributions by such former member shall recommence in accordance with Section 2.66.120. (Ord. 16643 §6; July 25, 1994).

#### **2.66.087 Benefits; Commencement of Payment.**

The Plan Administrator shall commence the payment of benefits, on a monthly basis: (a) on the date of a member's retirement from the City in the case of an age and service retirement benefit; (b) on the date of determination of permanent and total disability by the Mayor in the case of a disability retirement benefit; and (c) at normal retirement age or, if the member has attained normal retirement age, at the date of his or her termination in the case of a partial annuity benefit. (Ord. 16643 §7; July 25, 1994).

#### **2.66.090 Survivor Benefits.**

(a) Benefits Payable to the Survivor Beneficiary of a Member Whose Death Occurs After the Member Has Commenced Receiving Age and Service Retirement Benefits.

The survivor beneficiary of a member whose death occurs after he or she has commenced receiving age and service retirement benefits shall be entitled to receive benefits payable under the survivorship option elected by the member.

In the event that both the member and the survivor beneficiary, if any, die before the aggregate amount of the member's required contributions plus accrued regular interest thereof have been distributed as age and service retirement benefits or survivor benefits, the balance of the member's required contributions plus accrued regular interest thereon shall be distributed to such person or persons as the member or the survivor beneficiary shall have designated in writing filed with the Plan Administrator. If no designated person survives, and if the balance is \$300.00 or more, the balance shall be paid to the personal representative of the member or the survivor beneficiary; and if the balance is less than \$300.00, the City may pay it to such claimant or claimants as the City, in its discretion, shall determine to be entitled to payment.

(b) Benefits Payable to the Surviving Spouse and Minor Children, or to Survivor Beneficiary, of a Member Whose Death is Caused By or Results From Injuries Incurred in the Line of Duty.

(1) If the member's death is caused by or occurs as a result of injury incurred in the line of duty, and if the member has not designated a survivor beneficiary and elected a survivorship option, a benefit equal to fifty-four percent of regular pay shall be paid to the member's surviving spouse during his or her lifetime or until his or her remarriage; and upon such surviving spouse's death or remarriage, prorata to the member's surviving minor children until the youngest surviving minor child attains the age of nineteen years.

(2) If the member has designated a survivor beneficiary under the provisions of Section 2.66.050, the survivor beneficiary shall be entitled to receive benefits payable under the survivorship option elected by the member upon the member's death, regardless of whether the member's death occurs before or after the member becomes eligible to receive age and service retirement benefits; and the survivorship option shall be valued as if the member had become entitled to age and service retirement benefits on the date of his or her death.

(3) If the member did not elect a beneficiary and does not have a surviving spouse, the member's contributions and interest shall be paid to the member's estate.

(c) Benefits Payable to the Surviving Spouse and Minor Children, or to the Survivor Beneficiary of a Member Who Dies From Any Cause or Result Other Than an Injury Incurred in the Line of Duty.

(1) If the member dies from any cause other than an injury incurred in the line of duty, and if the member has not designated a survivor beneficiary and elected a survivorship option, a benefit equal to the otherwise applicable disability retirement benefit for such member as set forth in Section 2.66.080(c) shall be paid to the member's surviving spouse during his or her lifetime or until his or her remarriage, provided that the member and the surviving spouse were married at the time of the member's death; and upon such spouse's death or remarriage, prorata to the member's surviving minor children until the youngest surviving minor child attains the age of nineteen years.

(2) If the member has designated a survivor beneficiary under the provisions of Section 2.66.050, the survivor beneficiary shall be entitled to receive the otherwise applicable disability retirement benefit as set forth in 2.66.080(c). The benefit shall be valued in accordance with Survivorship Option 1, for the lifetime of the survivor beneficiary only.

(3) If the member did not elect a beneficiary and does not have a surviving spouse, the member's contributions and interest shall be paid to the member's estate.

(d) Benefits Payable to Spouse or Survivor Beneficiary of a Member Whose Death Occurs After the Member Has Commenced Receiving Disability Retirement Benefits.

(1) If a member's death occurs after he or she has commenced receiving disability retirement benefits as the result of a permanent and total disability, whether occurring in the line of

duty or otherwise, and if the member has not designated a survivor beneficiary and elected a survivorship option as provided in subparagraph (d)(2), his or her retirement benefits shall thereafter be paid to the member's surviving spouse during his or her lifetime or until his or her remarriage; and upon such surviving spouse's death or remarriage, prorata to the member's surviving minor children until the youngest surviving minor child attains the age of nineteen years.

(2) If a member who is entitled to receive an age and service retirement benefit when such permanent and total disability occurs elects on or prior to the effective date of such disability retirement, or within thirty days thereafter, to designate a survivor beneficiary in accordance with the provisions of Section 2.66.050, the payments under this subsection shall instead be made to such survivor beneficiary, for the lifetime of the survivor beneficiary only, based upon the amount provided under the selected option valued as of the date on which such member was placed on the pension roll because of such disability. (Ord. 16643 §8; July 25, 1994; prior Ord. 15986 §1; October 14, 1991; Ord. 15728 §9; September 24, 1990).

#### **2.66.095      Trustee to Trustee Transfer.**

A member may elect to have any eligible rollover distribution to which such member is entitled paid directly to an eligible retirement plan provided that such member specifies in writing to the Plan Administrator the specific eligible retirement plan to which such distribution is to be paid at any time prior to the member receiving such distribution. For purposes of this subsection, the terms "eligible rollover distribution" and "eligible retirement plan" shall have the definitions as provided for such terms in 26 U.S.C. (a)(31)(C) and (D), respectively. Such distribution shall be made in the form of a direct trustee to trustee transfer to the eligible retirement plan so specified; provided, however, the City shall take no responsibility for evaluating whether or not the retirement plan specified by the member is in fact an eligible retirement plan. (Ord. 16643 §9; July 25, 1994).

#### **2.66.100      Minimum Retirement and Survivorship Benefits.**

(a) The minimum monthly benefit payable either as an age and service retirement benefit, a disability benefit as a result of accident or other cause occurring in the line of duty, or as a survivor benefit to a surviving spouse or survivor beneficiary shall not be less than \$300.00. Members, their surviving spouses or survivor beneficiaries shall receive a monthly supplemental payment, if necessary, to ensure that the minimum monthly payment shall be \$300.00.

(b) The minimum monthly payment described in subsection (a) shall not be available to surviving minor children. (Ord. 15728 §10; September 24, 1990).

#### **2.66.107      Cost of Living Adjustment; Initial Amounts; Annual Increase; How Funded.**

(a) Effective September 1, 1992, and annually on each September 1st thereafter, all members who have received normal age and service retirement benefits, extended age and extended service benefits, early retirement benefits, or line-of-duty disability retirement benefits for at least twelve months preceding September 1, 1992, or any September 1st thereafter, shall be entitled to receive a lump sum payment as a cost of living adjustment. The lump sum payment shall be payable on or immediately after September 1, 1992, and shall be a base amount of \$600.00. Effective September 1, 1994, the base amount shall be increased to \$750.00. Said base amount shall be increased annually thereafter in accordance with subsection (c) hereof.

(b) Effective September 1, 1992, and annually on September 1st thereafter, all members who have received partial annuity benefits or non-duty disability retirement benefits for at least twelve months preceding September 1, 1992, or any September 1st thereafter, shall be entitled to

receive a lump sum payment as a cost of living adjustment. The lump sum payment shall be payable on or immediately after September 1, 1992 and shall be the amount obtained by applying the ratio of the number of years of the member's service (not to exceed twenty-one) over the number twenty-one applied multiplied by the base amount described in subsection (a).

(c) The amount of the lump sum payment to which a member shall be entitled under subsection (a) or (b) hereof shall be annually increased by the lesser of three percent or the percentage increase in the Consumer Price Index for the last full calendar year prior to each September 1st.

The Consumer Price Index shall mean the Consumer Price Index for all urban consumers, all cities, all items (1982-84 = 100), issued and published by the Bureau of Labor Statistics of the United States Department of Labor. In the event that the Consumer Price Index ceases to use the 1982-84 base rate of 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have been arrived at had the manner of computing the Consumer Price Index on the effective date of this ordinance not been altered. If the Consumer Price Index is not available, the Plan Administrator shall utilize a successor or substitute index to the Consumer Price Index, appropriately adjusted.

(d) The lump sum payments contemplated hereunder shall be paid from an accounting pool, the amount of which shall be determined as follows: The Plan Administrator shall annually calculate the difference between the rate of interest actually earned by the Police and Fire Pension Fund and the actuarially assumed rate of interest then currently utilized in calculating pension fund liabilities. The interest differential shall be multiplied by a ratio of the retirant and beneficiary liability of the Police and Fire Pension Fund over the total liability of the Police and Fire Pension Fund, and the product thereof shall annually be allocated to the accounting pool. All such annual additions to the accounting pool plus regular interest earned and applicable to the amounts allocated to the accounting pool shall constitute the pool of funds from which the payments described above shall be paid. (Ord. 16643 §11; July 25, 1994; prior Ord. 15987 §1; October 14, 1991).

#### **2.66.110 Payments Under Worker's Compensation Act.**

Notwithstanding any other provisions of this Chapter 2.66, no member shall be entitled during any period of disability to receive in full both his or her benefits under this plan and in addition benefits under the Nebraska Worker's Compensation Act. All Nebraska Worker's Compensation Act benefits shall be payable in full to such member or his or her dependents as provided in such act, but all amounts paid by the City or its insurer under such act to any disabled member entitled to receive a salary and earned fringe benefits, or benefits under this plan, during such disability, or to the surviving spouse or children of any deceased member, shall be considered as payments on account of such salary and earned fringe benefits, or benefits under this plan, and shall be credited thereon. The remaining balance of such salary and earned fringe benefits or benefits under this plan, if any, shall be payable as otherwise provided by this Chapter 2.66.

In the event permanent disability or death benefits payable to a member or his or her dependents under the Nebraska Worker's Compensation Act exceed the maximum disability or death benefits, the member or his or her dependents or designated beneficiaries would otherwise be entitled to under this chapter, the accumulated contributions of such member, plus regular interest, shall be paid in a lump sum to such member, his or her survivor beneficiary, or his or her personal representative. (Ord. 15728 §11; September 24, 1990).

#### **2.66.120 Member Contributions.**

(a) Subject to subparagraphs (b), (c), and (d) below, regular contributions of seven percent of a member's base pay shall be made by payroll deduction in each pay period during which the member is required to contribute to the plan. Such contributions shall be funded by reduction in the member's salary.

(b) Contributions for credited periods of military service. The City may require each member who receives years of service credit for military service to contribute to the City an amount equal to not more than three percent of his or her base pay for each year of military service credit. The maximum member contribution for any year of military service credit shall not exceed \$2,500, and shall be based upon the base pay earned by the member at the time of his or her entry into military service; but no contribution shall be required for any portion of such period when not required of the other members.

(c) Military service, time allowed. Where a commissioned member of the Fire or Police Department has left said department and entered into the military forces of the United States or shall hereafter do so in time of war or national emergency, the period of military service, up to a maximum of four years in each such case, shall be considered and computed as time served in the Fire or Police Department if he or she returns or will return to service in such Fire or Police Department not later than ninety days following the date of his or her discharge from the military forces, and shall serve in such paid Fire or Police Department during a period of at least one year after September 7, 1947.

(d) Contributions. Every member who has completed twenty-one years of service shall discontinue contributions to the plan. All funds in excess of twenty-one years contribution shall be distributed as a lump sum at separation or retirement in accordance with IRS regulations.

(e) Notwithstanding the provisions of Section 2.66.120(c) to the contrary, contributions, benefits, and years of service credit with respect to qualified military service will be provided in accordance with the rules related to the Veterans Reemployment rights pursuant to USERRA as defined by the provisions of Internal Revenue Code Section 414(u) effective December 12, 1994. (Ord. 17860 §6; June 11, 2001: prior Ord. 16443 §12; July 25, 1994: Ord. 15728 §12; September 24, 1990).

#### **2.66.130 Pickup Contributions.**

The City shall pick up the member contributions required by Section 2.66.120 in accordance with the favorable ruling pursuant to Section 414(h) of the United States Internal Revenue Code, and the contribution so picked up shall be treated as employer contributions in determining federal tax treatment under the United States Internal Revenue Code, except that the City shall continue to withhold federal income taxes based upon the contributions until the Internal Revenue Service or the federal courts, rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The City shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The City shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as employee contributions made prior to the date picked up. (Ord. 15728 §13; September 24, 1990).

#### **2.66.140 Plan Administration; Fund Investments.**

(a) The Personnel Director, or a designated representative of the director, shall act as the Plan Administrator for the Police and Fire Pension Plan.

(b) The Plan Administrator, after consulting with the Police and Fire Pension Plan Advisory Committee as hereinafter provided, may invest all funds of the Police and Fire Pension Fund or may contract with an insurance company, trust company, or other financial institution including, but not limited to, brokerage houses, investment managers, savings and loan associations, banks, credit unions, Federal Farmers' Home Administration or Veterans' Administration approved lenders to manage such funds. The funds shall be invested in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the insurance company, trust company, or other financial institution contracted with has special skills or is named on the basis of representation of special skills or expertise, such company or institution is under a duty to use such skills. All such investments or contracts shall be approved by the City Council.

(c) The City shall anticipate its liability for future payments of retirement benefits under the plan on an actuarial basis and, in order to equalize the tax burden over a period of years, shall levy and collect taxes in each fiscal year sufficient to meet current needs and equalize future payments. The tax shall be in excess of and in addition to all other taxes now or hereafter authorized to be levied by the City. The tax so levied and collected, together with contributions made by members, shall be credited to the Police and Fire Pension Fund in accordance with the terms of Section 401(a)(2) of the Internal Revenue Code of 1986; and any unexpended balance remaining in the fund at the close of the fiscal year shall be reappropriated to the Police and Fire Pension Fund for the ensuing year. Pension payments required by law shall be a general obligation of the City and may be made out of, but not limited to, the fund.

The City will conform to the requirements of Section 415(b) of the Internal Revenue Code of 1986 as it applies to the general benefits of this plan.

(d) All assets of the Plan shall be held and invested for the sole purpose of meeting the legitimate obligations of the Plan and shall be used for no other purpose. No part of the assets shall be used for or diverted to purposes other than for the exclusive benefit of members and beneficiaries prior to satisfaction of all Plan obligations. (Ord. 17860 §7; June 11, 2001: prior Ord. 16443 §13; July 25, 1994: Ord. 15728 §14; September 24, 1990).

#### **2.66.150 Mental Incapacity; Exercise of Options.**

In the event of mental incapacity of a member, any right of election, selection, or designation permitted under the provisions of this chapter may be exercised by the member's duly appointed guardian or conservator. (Ord. 15728 §15; September 24, 1990).

#### **2.66.180 Applicability; Benefits Under Prior Laws.**

The benefits under the plan as set forth in this Chapter 2.66 shall be applicable to members who receive benefits on or after the effective date of this ordinance. Nothing in this Chapter 2.66 shall in any manner affect the right of any person now receiving or entitled to receive, now or in the future, pension or other benefits provided for in Chapter 2.64 of the Lincoln Municipal Code as they exist immediately prior to the effective date of this ordinance, to receive such pension or other benefits in all respects the same as if such sections remained in full force and effect. (Ord. 15728 §18; September 24, 1990).

**2.66.190      Amendment, Termination and Discontinuance of the Plan.**

(a)      It is the intent of the City that the Plan be permanent and remain in effect for an indefinite period. The City, however, reserves the right to modify, amend, or discontinue the Plan at any time. The City expressly reserves the right to amend the Plan in order to take advantage of or comply with any statute, rule, or regulation of the federal government or the State of Nebraska, or any duly constituted agency thereof.

(b)      In the event the Plan is discontinued or terminated, all members shall immediately become fully vested in their benefits. The discontinuance or termination shall be carried out in all respects in conformance with applicable statute, rule, or regulation of the federal government or the State of Nebraska, or any duly constituted agency thereof. (Ord. 17860 §8; June 11, 2001).

**2.66.200      Qualified Retirement Plan.**

The City intends that the Plan be a qualified plan under Section 401 of the Internal Revenue Code, as amended. The Plan shall be administered so as to fulfill this intent, including but not limited to the following: Distributions from the Plan will comply with the requirements of Internal Revenue Code Section 401(a)(8) and regulations thereunder, including that forfeitures will not be applied to increase the benefits that any member would otherwise be entitled to receive under the Plan. (Ord. 17860 §9; June 11, 2001).

## APPENDIX "A"

### § 4.132 Schedule of Ratings - Mental Disorders.

#### PSYCHOTIC DISORDERS

#### Rating

- 9201 Schizophrenia, disorganized type.
- 9202 Schizophrenia, catatonic type.
- 9203 Schizophrenia, paranoid type.
- 9204 Schizophrenia, undifferentiated type.
- 9205 Schizophrenia, residual type; schizoaffective disorder; other and unspecified types.
- 9206 Bipolar disorder, manic, depressed, or mixed.
- 9207 Major depression with psychotic features.
- 9208 Paranoid disorders (specify type).
- 9209 Major depression with melancholia.
- 9210 Atypical psychosis.

#### General Rating Formula for Psychotic Disorders:

Active psychotic manifestations of such extent, severity, depth, persistence or bizarreness as to produce total social and industrial inadaptability . . . . .	100
With lesser symptomatology such as to produce severe impairment of social and industrial adaptability . . . . .	70
Considerable impairment of social and industrial adaptability . . . . .	50
Definite impairment of social and industrial adaptability . . . . .	30
Mild impairment of social and industrial adaptability . . . . .	10
Psychosis in full remission . . . . .	0

#### Convalescent rating in psychotic disorders:

Upon regular discharge or release to non-bed care from a hospital where a beneficiary has been under care and treatment for a continuous period in the hospital of not less than 6 months, an open rating of 100 percent will be continued for 6 months. A VA examination is mandatory at the expiration of the 6-month period, after which the condition will be rated in accordance with the degree of disability shown. Where the beneficiary has been under hospital care and treatment for less than 6 months and is not ratable at 100 percent under the rating formula, consideration should be given to § 4.29.



## ORGANIC MENTAL DISORDERS

### Rating

9300 Delirium associated with infection, trauma, circulatory disturbance, etc.

NOTE: Acute organic mental disorders with or without accompanying psychotic disorder are temporary and reversible. If psychiatric impairment attributable to such diagnosis continues beyond 6 months, the report of examination is to be returned to the examiner for reconsideration of the diagnosis.

9301 Dementia associated with central nervous system syphilis.

9302 Dementia associated with intracranial infections other than syphilis.

9303 Dementia associated with alcoholism.

9304 Dementia associated with brain trauma.

9305 Multi-infarct dementia with cerebral arteriosclerosis.

9306 Multi-infarct dementia due to causes other than cerebral arteriosclerosis.

9307 Dementia associated with convulsive disorder (idiopathic epilepsy).

9308 Dementia associated with disturbances of metabolism.

9309 Dementia associated with brain tumor.

9310 Dementia due to unknown cause.

9311 Dementia due to undiagnosed cause.

9312 Dementia, primary, degenerative.

9315 Dementia associated with epidemic encephalitis.

9322 Dementia associated with endocrine disorder.

9324 Dementia associated with systemic infection.

9325 Dementia associated with drug or poison intoxication (other than alcohol).

Before attempting to rate organic mental disorders, rating specialists should become thoroughly acquainted with the relevant concepts presented by the current Diagnostic and Statistical Manual of the American Psychiatric Association and the following:

- (1) Under the codes above, the basic syndrome of organic mental disorder may be the only mental disturbance present or it may appear with related "psychotic" manifestations. An organic mental disorder with or without such qualifying phrase will be rated according to the general rating formula for organic mental disorders, assigning a rating which reflects the entire psychiatric picture.
- (2) An organic mental disorder, as defined in the American Psychiatric Association manual, is characterized solely by psychiatric manifestations. However, neurological or other manifestations of etiology common to the mental disorder may be present, and if present, are to be rated separately as distinct entities under the neurological or other appropriate system and combined with the rating for the mental disorder.

General Rating Formula for Organic Mental Disorders:

Impairment of intellectual functions, orientation, memory and judgment, and lability and shallowness of affect of such extent, severity, depth, and persistence as to produce total social and industrial inadaptability . . . . .	100
Less than 100 percent, in symptom combinations productive of:	
Severe impairment of social and industrial adaptability . . . . .	70
Considerable impairment of social and industrial adaptability . . . . .	50
Definite impairment of social and industrial adaptability . . . . .	30
Mild impairment of social and industrial adaptability . . . . .	10
No impairment of social and industrial adaptability . . . . .	0

**PSYCHONEUROTIC DISORDERS**

Rating

- 9400 Generalized anxiety disorder.
- 9401 Psychogenic amnesia; psychogenic fugue; multiple personality.
- 9402 Conversion disorder; psychogenic pain disorder.
- 9403 Phobic disorder.
- 9404 Obsessive compulsive disorder.
- 9405 Dysthymic disorder; Adjustment disorder with depressed mood; Major depression without melancholia.
- 9408 Depersonalization disorder.
- 9409 Hypochondriasis.
- 9410 Other and unspecified neurosis.
- 9411 Post-traumatic stress disorder.

Read well notes (1) to (4) following general rating formula before applying the general rating formula.

General Rating Formula for Psychoneurotic Disorders:

The attitudes of all contacts except the most intimate are so adversely affected as to result in virtual isolation in the community. Totally incapacitating psychoneurotic, symptoms bordering on gross repudiation of reality with disturbed thought or behavioral processes associated with almost all daily activities such as fantasy, confusion, panic and explosions of aggressive energy resulting in profound retreat from mature behavior. Demonstrably unable to obtain or retain employment . . . . .	100
Ability to establish and maintain effective or favorable relationships with people is severely impaired. The psychoneurotic symptoms are of such severity and persistence that there is severe impairment in the ability to obtain or retain employment . . . . .	70

Ability to establish or maintain effective or favorable relationships with people is considerably impaired. By reason of psychoneurotic symptoms the reliability, flexibility and efficiency levels are so reduced as to result in considerable industrial impairment . . . . .	50
Definite impairment in the ability to establish or maintain effective and wholesome relationships with people. The psychoneurotic symptoms result in such reduction in initiative, flexibility, efficiency and reliability levels as to produce definite industrial impairment . . . . .	30
Less than criteria for the 30 percent, with emotional tension or other evidence of anxiety productive of mild social and industrial impairment . . . . .	10
There are neurotic symptoms which may somewhat adversely affect relationships with others but which do not cause impairment of working ability . . . . .	0
NOTE (1). Social impairment per se will not be used as the sole basis for any specific percentage evaluation, but is of value only in substantiating the degree of disability based on all of the findings.	
NOTE (2). The requirements for a compensable rating are not met when the psychiatric findings are not more characteristic than minor alterations of mood beyond normal limits; fatigue or anxiety incident to actual situations; minor compulsive acts or phobias; occasional stuttering or stammering; minor habit spasms or tics; minor subjective sensory disturbances such as anosmia, deafness, loss of sense of taste, anesthesia, paresthesia, etc. When such findings actually interfere with employability to a mild degree, a 10 percent rating under the general rating formula may be assigned.	
NOTE (3). It is to be emphasized that vague complaints are not to be erected into a concept of conversion disorder. A diagnosis of conversion disorder must be established on the basis of specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of conversion disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned through channels to the examiner for reconsideration.	
NOTE (4). When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.	

## PSYCHOLOGICAL FACTORS AFFECTING PHYSICAL CONDITION

### Rating

- 9500 Psychological factors affecting skin condition.
- 9501 Psychological factors affecting cardiovascular condition.
- 9502 Psychological factors affecting gastrointestinal condition.
- 9505 Psychological factors affecting musculoskeletal condition.
- 9506 Psychological factors affecting respiratory condition.
- 9507 Psychological factors affecting hemic and lymphatic condition.
- 9508 Psychological factors affecting genitourinary condition.
- 9509 Psychological factors affecting endocrine condition.
- 9510 Psychological factors affecting condition of organ of special senses (specify sense organ).
- 9511 Psychological factors affecting other type of physical condition.

Evaluate psychological factors affecting physical condition by the general rating formula for psychoneurotic disorders.

NOTE (1). It is to be emphasized that vague complaints are not to be erected into a concept of psychological disorder. A diagnosis of a psychological disorder affecting physical condition must be established on specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of a psychological disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned.

NOTE (2). When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspect of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.

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